

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission,	:	
On Its Own Motion,	:	
vs.	:	
Union Pacific Railroad Company,	:	
Respondent.	:	
	:	T02-0034
Citation with respect to Railroad's failure to	:	
respond to several Illinois Commerce Commission	:	
correspondences regarding Union Pacific Railroad	:	
Company's failure to maintain various highway/rail	:	
grade crossing surfaces in accordance with 92	:	
Illinois Administrative Code Part 1535.	:	

ORDER

By the Commission

On April 24, 2002, the Illinois Commerce Commission ("Commission"), on its own motion, issued the above Citation in this proceeding requiring the Union Pacific Railroad Company ("Railroad") to appear at a hearing at the Commission's offices in Springfield, Illinois on May 24, 2002, to show cause why an Order should not be entered requiring the Railroad to comply with the relief sought by the Commission.

On May 9, 2002 and August 12, 2002, Staff filed Motions for Continuance, which were granted in order to give Staff more time to assess the Railroad's performance utilizing a new e-mail communication response system.

On February 27, 2003, pursuant to proper legal notice, a hearing was held before a duly authorized Administrative Law Judge at the Commission's office in Springfield, Illinois. Counsel for the Railroad entered an appearance. Also appearing was a member of the Commission's Railroad Section ("Staff"). At the conclusion of the hearing the matter was marked "Heard and Taken."

At the hearing Staff testified that there had been three separate letters sent to the Railroad regarding crossing surface complaints, which the Railroad failed to respond to for several months. Said letters were dated January 3, 2002, February 4, 2002, and March 5, 2002, and were admitted as Staff Exhibits 1,2 and 3. The Citation ordered the Railroad to provide a schedule specifying how and when their Company would make the repairs listed in said letters and develop a plan to respond to future Staff "prioritized complaint letters" in a more propitious time frame.

Staff testified that the Railroad finally responded to the letters on April 19, 2002. By then, however, the citation proceedings were already in progress, and the Citation was entered on April 24, 2002. The response letter from the Railroad was admitted as Staff Exhibit 4. Said response letter addressed all of the complaints that were contained in the three complaint letters and suggested that a meeting be held between the Railroad and Staff to discuss crossing complaint issues. A meeting was held on May 8, 2002, and as a result thereof, Staff and the Railroad agreed to try a new communication system utilizing e-mail correspondence instead of letters to transmit crossing complaint information between Staff and the Railroad. Staff was to e-mail a tabulation of complaints to the Railroad at the first part of every month and the Railroad was to e-mail a response during the middle of the same month. The most recent of said e-mail tabulated complaint lists was admitted as Staff Exhibit 5.

Staff testified that there was still one complaint from the original three letters that had not yet been resolved by the Railroad. A compilation summary of all of the e-mailed lists was admitted as Staff Exhibit 6. Staff stated that the compilation shows that the Railroad has made final repairs on approximately nineteen out of a total of forty-two complaints over the past eight months and has made temporary repairs on most of the remaining crossings. Staff noted that most of the crossing surface complaints were from two Railroad lines, namely the "Pana Subdivision" and the "Springfield Subdivision". Staff testified that the Railroad has been promising to totally rehabilitate the Pana Subdivision since 2001 and that the Railroad also has stated that the Illinois Department of Transportation ("Department") was going to finance the total rehabilitation of the Springfield Subdivision in 2003 (because it is part of the High Speed Rail corridor). However, it has been learned through recent correspondence with the Department that work on the High Speed Rail corridor from the north side of Springfield to the south is not on their five year plan because of the severe budget deficit that the State of Illinois is now experiencing. It was also noted that the Railroad apparently is expecting to completely rehabilitate the Pana Subdivision in the Spring of 2003, as indicated in its most recent e-mails.

Staff testified that the new e-mail system for communicating complaints has been generally successful in that it is much more efficient and tends to be a lot easier than the "letter" method. The Railroad's effectiveness in responding to crossing complaints has improved substantially since the new system has been in use. However, Staff indicated that even though the situation has improved with regards to the Railroad responding to complaints in a more timely manner, the concern now is that they resolve the remaining complaints that are listed on Exhibit 5, since many of the complaints, particularly on the Pana and Springfield Subdivisions, are still awaiting permanent repairs. Staff also stated that the permanent repairs that the Railroad makes to the crossing surfaces must be in accordance with 92 Illinois Administrative Code Part 1535 (92 IAC Part 1535). Also, proper construction materials and methods should be utilized, such as constructing the runoff ramps (with properly compacted hot mix asphalt) at a length such that it would affect a reasonably smooth ride for the motoring public. Staff also noted that there are a few of the crossings listed on Exhibit 5 that have two sets of tracks, which are not at or near the same elevation as each other and that both tracks

need to be reconstructed so that they are basically the same elevation in order to be in compliance with 92 IAC Part 1535.

The Commission, having given due consideration to the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Railroad is a corporation engaged in the transportation of property and/or passengers for-hire in the State of Illinois and as such, is a "rail carrier" within the meaning of Chapter 625 ILCS 5/18c-1104(30) of the Illinois Commercial Transportation Law ("Law"), as amended;
- (2) the Commission has jurisdiction of the subject matter and the parties herein;
- (3) matters contained in the prefatory portion of this order are adopted as findings of fact;
- (4) the Railroad has made significant improvements in responding to railroad grade crossing complaints by utilizing a more efficient e-mail system of communicating with Commission Staff;
- (5) the Railroad has completed permanent repairs on a substantial number of grade crossing surface complaints; there exists several other crossings that the Railroad has not made repairs to, or has only made temporary repairs to that are now awaiting permanent repairs;
- (6) the Railroad should be required to complete the permanent repairs of all of the remaining crossing complaints as listed on Exhibit 5, by August 1, 2003, in accordance with 92 Illinois Administrative Code Part 1535;
- (7) the Railroad should be required to bear all cost of making the crossing surface reconstructions/repairs set forth in Staff Exhibit 5;
- (8) Chapter 625 ILCS 5/18c-1701 and 5/18c-1704 require each "person" as defined by 5/18c-1104 to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Commission that the Railroad be, and it is hereby required to complete the permanent repairs of all of the remaining crossing

complaints as listed herein, on Exhibit 5, by August 1, 2003, in accordance with 92 Illinois Administrative Code Part 1535.

IT IS FURTHER ORDERED that the Railroad be and it is hereby required and Directed to bear all cost of making the crossing surface reconstructions/repairs herein required.

IT IS FURTHER ORDERED that the Railroad shall at three (3) month intervals from the date of this Order until the work has been completed, submit written reports to the Director of Processing, Transportation Bureau of the Commission stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of work, and project manager information (the name, title, mailing address, phone number and facsimile of the Railroad employee responsible for management of the project.)

IT IS FURTHER ORDERED that any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time which exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Commission shall retain jurisdiction for the purpose of issuing any supplemental order or orders, as it may deem necessary.

IT IS FURTHER ORDERED that subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative Review Law.

By Order of the Commission this 9<sup>th</sup> day of April, 2003.

JUDGE	<i>[Signature]</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>[Signature]</i>

*Edward C. Hurley* <sub>2</sub>

Chairman